IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14-11-2007

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.4200 of 1999

S & S Industries and Enterprises
Limited, rep. by its General Manager
(Legal and Admn.) Mr.T.V.Babu
189, Aarthi Chambers, Anna Salai,
Chennai-600 002. .. Petitioner.

Versus

1.Chief General Manager
Chennai Telephones
78, Purasawalkam High Road,
Chennai-600 010.

2.Deputy General Manager (LD),
Chennai Telephones
29, Ritherdon Road, Vepery,
Chennai-600 007.

3.Senior Accounts Officer
(Telephone Revenue (LD)
Office of the Deputy General
Manager (LD), Chennai Telephones
29, Ritherdon Road, Vepery,
Chennai-600 007. .. Respondents.

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Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records in impugned Notice No.AOTR/LD/RX.IV/RA10/SP 457/Vol.II/6, dated 8/9-3-1999 at Madras-7, on the file of the third respondent herein and quash the same.

For petitioner : Mr.R.Amizdhu

For respondents : Mr.S.Udayakumar (ACGSC)

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O R D E R

Heard, Mr.R.Amizhdhu, the learned counsel appearing for the petitioner and Mr.S.Udayakumar, the learned Additional Central Government Standing counsel appearing for the respondents.

2. It is submitted that the petitioner is engaged, interalia, in the business of manufacture and sale of refined oils and mineral water at its factory located at Arcot, Tamil Nadu. The petitioner company had availed the hotline facility circuit No.457 at its Anna Salai office. The petitioner company had been paying the telephone bills regularly and promptly. In the month of February, 1996, the petitioner company's office at Anna Salai was shifted to Vadapalani. On 20.2.1996, a letter had been sent to the respondents requesting them to extend the facility to the new premises. Though the hotline facility was availed by the petitioner for a period of seven months only, from 1.7.95 to 20.2.96, they had paid a sum of Rs.1,08,598/- as rent for the period from 1.7.95 to 30.6.96. Therefore, the petitioner company had requested the respondents to give a rebate for the period for which the hotline facility was not available to them.

3. It has been further stated that even though the facility was not available to the petitioner company, for the period from 1.3.96 to 30.6.97, they had paid the rent in advance for the periods from 1.7.95 to 30.6.96 and 1.7.96 to 30.6.97. The petitioner company had requested the first respondent by a letter, dated 30.8.96, to refund/re-adjust the rental charges paid for the period for which the speech circuit was not available to the petitioner. Again by a letter, dated 14.10.96, the petitioner had requested the first respondent to refund the amount due to them. A representation was also made to the 3rd respondent, on 18.7.97, requesting for the adjustment of the amount which had already been paid as rent for the period from 1.7.96 to 30.6.97. Further, the petitioner had informed the second respondent on 28.12.98 that the speech circuit No.457 was not required by them any more. The said facility was surrendered with effect from 31.12.98 and it had been accepted by the respondents. However, a communication had been sent by the third respondent, dated 8.3.99, calling upon the petitioner to pay the rental arrears for the period from 1.7.1997 to 30.6.98 and another bill for a sum of Rs.26,650/- had been raised on 9.12.98. The total amount said to be due from the petitioner was Rs.2,44,846/-.

4. It was also stated in the communication issued by the third respondent that the amount demanded had to be paid on or before 12.3.99, failing which the telephone connection of Telephone Nos.6242740 and 625 8112 working at Ambattur and three residential numbers of the Senior Executive of the petitioner company would be disconnected. In such circumstances, the present writ petition had been filed before this Court.

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5. It has been submitted by the learned counsel appearing on behalf of the petitioner company that the respondents have no authority or power to issue the impugned communication, dated 8/9-3-99, especially when the request of the petitioner to refund/re-adjust the amount is pending before the respondents.

6. The learned counsel appearing on behalf of the respondents had submitted that the delay in shifting the facility to the new premises of the petitioner company was only due to the callous attitude of the petitioner as they had failed to provide the necessary modems even after several reminders from the respondents, including the one issued on 21.2.97. According to the letter, dated 6.8.96, issued by the petitioner company, it is clear that the circuit was operational at the old address even during the month of August, 1996. Further, the petitioner company having realised that their claim was unreasonable they had promised to settle the outstanding dues payable by them. However, without settling the amount due, they had come before this court making unreasonable claims.

7. It has been further submitted by the learned counsel appearing for the respondents that this Court under Article 226 of the Constitution of India cannot entertain the disputed questions of fact and cannot act as a fact finding authority, in view of the decision rendered in B.Ramachandra Reddy Vs. The Union of India and others (AIR 1993 Andhra Pradesh 19). Further, in accordance with Section 7-B of the Indian Telegraph Act, 1885, the matter in dispute has to be resolved only by way of arbitration. Hence, the writ petition filed by the petitioner, under Article 226 of the Constitution of India, before this court, is liable to be dismissed as ill-founded.

8. At this stage, the learned counsel appearing for the petitioner had expressed the apprehension that the respondents may take coercive steps to recover the amounts alleged to be due from the petitioner before the dispute is resolved by way of arbitration. However, the learned Counsel appearing for the respondents had allayed the apprehension of the petitioner by submitting that such coercive steps would not be taken till the arbitration proceedings are concluded.

9. Considering the submissions made by the learned counsel appearing for the parties concerned, this Court is of the considered view that the only remedy available to the petitioner is to invoke Section 7-B of the Indian Telegraph Act, 1885, to settle the dispute by way of arbitration.

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10. In such circumstances, the writ petition stands dismissed, leaving it open to the parties concerned to take appropriate steps as provided under Section 7-B of the Indian Telegraph Act, 1885, to settle the matter by way of arbitration proceedings. Consequently, connected WMP.No.6028 of 1999 is closed.

csh

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.Chief General Manager
Chennai Telephones
78, Purasawalkam High Road,
Chennai-600 010.

2.Deputy General Manager (LD),
Chennai Telephones
29, Ritherdon Road, Vepery,
Chennai-600 007.

3.Senior Accounts Officer
(Telephone Revenue (LD)
Office of the Deputy General
Manager (LD), Chennai Telephones
29, Ritherdon Road, Vepery,
Chennai-600 007.

+1 cc to Mr.R.Amizshu, Advocate Sr.No.67894.

+1 cc to Mr.S.Udayakumar, Advocate Sr.No.67537.

VG(CO)
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